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No. 94-222

In the
Supreme Court
of the
United States

OCTOBER TERM, 1994

INTERMEDICS, INC.,
Petitioner,
vs.
VENTRITEX CO., INC.,
MICHAEL SWEENEY and
BENJAMIN PLESS,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

REPLY BRIEF ON PETITION FOR WRIT OF CERTIORARI

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The Opposition mischaracterizes the first two questions presented for review by petitioner Intermedics. Intermedics does not seek a ruling that a lower court must "write an opinion in every case" (compare Opposition at 1). As set forth in the questions presented and explained in the Petition, Intermedics asserts that a court of appeals acts improperly when it provides no opinion or explanation whatsoever in a case presenting issues of precedential import. It may be perfectly appropriate in many appeals that the court's explanation be presented in some abbreviated form short of a formal, publishable "opinion"— for example a non-precedential "order" pursuant to Federal Circuit Rule 47.6 (App. I2-I3). Intermedics further asserts that the Federal Cir-

cuit's frequent practice of affirming in a one-word summary fashion is well outside the course of accepted appellate proceedings and should be halted.

The Opposition suggests that it is appropriate to dispense with an appellate opinion in the present case because the District Court has already written one. To the contrary, the fact that the lower court wrote and published an opinion is all the more reason that an appellate opinion is required in the present case. The District Court opinion made clear that the summary judgment involved a "difficult" and "significant" issue of first impression — a fact completely ignored in the Opposition. It is precisely this type of precedent-making case that calls most urgently for a reasoned appellate opinion. Indeed, the local rules of a number of the circuits specifically advise *publication* of an appellate opinion in those cases where the lower court decision has been published.[1]

Respondents' suggestion (Opposition at 3) that the District Court's ruling on the statute of limitations issue is limited in application is also insupportable. The California statute of limitations section interpreted by the District Court is taken verbatim from § 6 of the Uniform Trade Secrets Act, an act which has been adopted by over 30 other states. In its opinion, the District Court repeatedly stressed that its analysis was based on UTSA principles. See, e.g., App. B39-B42.

Respondents also argue that an opinion from the Federal Circuit is not necessary to guide the future conduct of this case because the lower court's opinion "disposes of all the issues presented." Opposition at 1, 4. This is incorrect. As explained in the Petition at pages 22-24, the appeal presented a number of issues involving pretrial and trial rulings of the District Court which are central to the ongoing litigation between the parties, but which were never mentioned in the District Court's summary judgment opinion. The Federal Circuit's Rule 36 judgment offers no indication that the court even reached these issues, let alone that it agreed with the lower court's resolution of them.

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[1]See App. I10 (Fourth Circuit Rule 18(a)(vi)); App. I14 (Sixth Circuit Rule 24(a)(vi)); App. I18 (Ninth Circuit Rule 36-2(e)).

Respondents state that the failure of the Federal Circuit to issue an opinion "speaks for itself" that the appellate court must have accepted the lower court's analysis and conclusions. Opposition at 4. This, of course, begs the very question presented. Neither the parties nor the public have any guidance from the appellate court as to the basis for its affirmance.

With regard to the third question presented, Intermedics is not asserting that the Federal Circuit's exercise of jurisdiction was not proper, and it is not challenging the Federal Circuit's failure to transfer the appeal (compare Opposition at 5). Rather, Intermedics seeks a remand with instructions that the Federal Circuit either issue an opinion itself or transfer the case if it determines that justice so requires. Petition at 9, 29. The underlying problem of the Federal Circuit's failure to issue an opinion did not arise until its Rule 36 judgment was entered, and the related question of transfer likewise could not have been presented before that time.

The Opposition at page 2 includes a number of other factual distortions. First, Intermedics opposed the "phased trial" of only six of its 37 asserted trade secrets. Second, in the earlier proceedings, the court dismissed all, not "most," of Intermedics's patent infringement claims as premature. Third, all of the jury's findings supporting a judgment of bad faith were vacated by the District Court, and a new trial on the matter was ordered.

CONCLUSION

For the reasons set forth above and in the Petition, Intermedics respectfully requests that the petition for certiorari be granted.

Dated: September 19, 1994

Respectfully submitted,

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